



## ***Changes to the 7(a) & 504 Programs as a result of new legislation***

*On April 5, 2004, H.R. 4062, which provides a temporary extension of authorization for certain SBA programs, was signed into law. Some of the most important changes are summarized in this Notice. These changes are effective starting on April 5, 2004, and expire on September 30, 2004, unless extended by subsequent legislation.*

### **7(a) Program Changes**

As a result of this legislation, SBA will be able to provide approximately an additional \$3 billion (for a total of approximately \$12.5 billion) in 7(a) loan guarantees through the end of this fiscal year.

The following is a summary of the 7(a) program changes that take effect immediately.

#### **Loan Amount**

1. Pursuant to this Notice, the temporary \$750,000 loan cap imposed by Policy Notice 5000-902 dated December 30, 2003 and which took effect on January 8, 2004, is lifted. The limit on the gross amount of a 7(a) loan once again is \$2.0 million, under section 7(a)(3)(A) of the Small Business Act ("Act").
2. H.R. 4062 temporarily increases the loan guaranty limit under section 7(a)(3)(A) of the Act from \$1.0 million to **\$1.5 million**. (For example, a \$2.0 million loan may now have a 75% guaranty.) This increase in the loan guaranty limit applies to loans approved on or after April 5, 2004 and through and including September 30, 2004.

#### **Lien Position/Combination Financing**

1. Pursuant to this Notice, the portion of Policy Notice 0000-1709 dated January 13, 2004, which temporarily prohibited the piggyback loan structure (see SOP 50 10 4, Subpart A, Chapter 2, paragraph 4(g)(3)) from qualifying for a 7(a) loan, is rescinded.
2. H.R. 4062 also creates a temporary new term, "Combination Financing," to describe a type of financing commonly known as "piggyback financing". The legislation provides that Combination Financings must meet the following requirements:

- The financing must be comprised of both a loan guaranteed under the 7(a) loan program and a commercial loan which is not guaranteed by the federal government.
- The commercial loan may be made by the same participating lender that is making the 7(a) loan or by a different lender.
- The commercial loan may be (but is not required to be) secured by a lien senior to the lien securing the 7(a) loan.
- The commercial loan may be made by a PLP lender.
- The commercial loan amount must not exceed the gross amount of the 7(a) loan.

If a PLP lender is making both the commercial loan and the 7(a) loan in a Combination Financing, the lender must submit the 7(a) loan to the SBA District Office, not the PLP Processing Center, for processing and approval.

### **Other Requirements for Combination Financing**

In addition to the items above, SBA is establishing the following requirements for Combination Loans:

- The term of the first lien note must be similar to the term of the SBA guaranteed loan, but no less than half the maturity of the SBA guaranteed loan.
- The first lien note must be fully amortizing and may not include a balloon payment.
- The interest rate of the first lien note may be no higher than the interest rate of the SBA guaranteed loan.
- A default interest rate on the first lien note is not permitted.
- No additional fees triggered by a default on the first lien note will be permitted.
- At least 75% of the proceeds of a Combination Financing must be used for real estate and long-term, fixed assets.
- The lien position for the SBA guaranteed loan may be no lower than second position.
- For the purpose of determining the size of the SBA loan, the “project” shall be defined as the total amount financed. It will not include the borrower’s down payment or any other items.
- The first lien note must be for a purpose that would be eligible for SBA financing.
- The lender cannot foreclose on the first lien note without foreclosing on the SBA note, therefore there must be a cross default provision in both loan notes to ensure they are treated as one loan.
- Each of these items must be documented in the loan file to expedite review of the case.
- Please refer to SOP 50 10 (4)(E) Chapter 2 (Business Loan Eligibility), Paragraph 4 (Utilization of Personal Resources) (d) (3) through (9).

### **Guarantee and Annual Fees**

1. If the commercial loan has a senior credit position to the 7(a) loan, a one-time fee equal to **0.7 percent of the amount of the commercial loan** is to be paid to SBA. This fee shall be paid by the SBA participating lender, and must be remitted when the up-front guarantee fee is paid. This fee may not be passed on to the borrower. If the commercial loan is in a shared lien (sometimes known as *pari passu*) or subordinate lien position to the 7(a) guaranteed loan, this one-time fee does not apply.
2. The on-going annual fee on all loans approved on or after April 5, 2004 and through and including September 30, 2004, is **increased to 0.36 percent** from the 0.25 percent previously allowed under section 7(a)(23) of the Act.
3. For loans approved on or after April 5, 2004 and through and including September 30, 2004, lenders **are not permitted to retain 25 percent** of the up-front guarantee fee on loans with a gross amount of \$150,000 or less (as previously allowed under section 7(a)(18)(B) of the Act), but rather must remit the full amount to SBA.
4. For loans approved on or after April 5, 2004 and through and including September 30, 2004, an additional up-front guarantee fee equal to **0.25 percent of the amount by which the guaranteed portion of the loan exceeds \$1.0 million**, must be paid to SBA.

### **SBA Express Program Changes**

1. SBA Express lenders may now approve SBA Express loans up to **\$2.0 million** (gross amount) using existing SBA Express procedures.
2. SBA will continue to accept applications for new participants in SBA Express and will continue to handle renewals under the current procedures.
3. The legislation does not change the current policies and procedures governing Export Express or Community Express.

### **Policy Waivers**

The Associate Administrator for Financial Assistance is hereby delegated the authority to waive the requirements not specifically contained in the statute.

### **504 Program Changes**

The legislation extends SBA's authority to collect certain fees with respect to 504 loans, through September 30, 2004.

We plan to issue a separate notice addressing procedural issues raised as a consequence of the legislation. SBA District Offices with questions on this notice may direct their

questions to Jim Hammersley, Director, Office of Loan Programs at [james.hammersley@sba.gov](mailto:james.hammersley@sba.gov). Lenders are directed to forward questions to the local SBA field office.

Hector V. Barreto  
Administrator

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